

In the Matter of Victor Klima, Department of Corrections

DOP Docket No. 2003-1065

(Merit System Board, decided June 23, 2004)

Victor Klima, a Senior Correction Officer with East Jersey State Prison, Department of Corrections, represented by Henry J. Cistrelli, Esq., appeals the denial of sick leave injury (SLI) benefits.

In the Employer's First Report of Accidental Injury or Occupational Disease, completed on May 3, 2002, the appellant indicates that he was assaulted by an inmate and injured his left ankle. The appellant was examined on May 3, 2002 at Rahway Hospital by Dr. Rajendra K. Sharma, who diagnosed him with a fractured ankle. On May 6, 2002, the appellant was examined by State-authorized physician, Dr. James Aragona, who diagnosed him with a fractured left ankle, authorized him off duty, and scheduled his surgery for May 9, 2002. The appellant was again examined by Dr. Aragona on May 22, 2002, who diagnosed him with a fractured ankle which was post operation and continued to authorize the appellant off duty. It is noted that the appellant received Worker's Compensation benefits from August 6 through November 25, 2002.

The appointing authority granted SLI benefits from May 3 through August 5, 2002, but denied further benefits beyond that date on the basis that the appellant had been grossly negligent. *See N.J.A.C. 4A:6-1.6(c)6*. The appointing authority contended that the appellant was found guilty of the charge that he made a serious mistake due to carelessness which led to his injuries. Specifically, it was alleged that the appellant, in violation of Departmental policy, escorted an inmate without a second officer.¹

On appeal to the Merit System Board, the appellant argues that he should be entitled to SLI benefits since the instant injury occurred while performing his work duties. Additionally, he contends that he was not grossly negligent and should not have been disciplined for this matter as he followed proper procedures. In this regard, the appellant provides arguments as to why he should not have been disciplined.

CONCLUSION

According to uniform SLI regulations, in order to be compensable, an injury or illness resulting in disability must be work related and the burden of proof to

¹ The appellant received a five-day suspension which he appealed to the Commissioner of Personnel. In a letter dated April 19, 2004, the Commissioner of Personnel denied review of the suspension. The appellant has appealed that determination to the Superior Court, Appellate Division.

establish entitlement to SLI benefits by a preponderance of the evidence rests with the appellant. See *N.J.A.C.* 4A:6-1.6(c) and *N.J.A.C.* 4A:6-1.7(h).

N.J.A.C. 4A:6-1.6(c)6 provides that an injury or illness is not compensable if an appointing authority establishes that gross negligence of the claimant contributed to the injury or illness. The Board interprets the gross negligence standard in the context of the SLI program to mean that benefits are appropriately denied when the claimant engaged in conduct which placed him or her at a substantial risk of harm. For example, in *In the Matter of Lennox Williams* (MSB, decided December 22, 1998), SLI benefits were denied to an employee for an injury to his hand which was caught in the cylinder of a printing machine since the employee, despite numerous warnings, failed to turn off the machine before making adjustments to it. The Board determined that his conduct constituted gross negligence and precluded him from receiving SLI benefits pursuant to *N.J.A.C.* 4A:6-1.6(c)6. The Board has similarly interpreted the gross negligence standard in more recent SLI appeals. See e.g., *In the Matter of Bessie Haynes* (MSB, decided March 7, 2000) (SLI denied to employee who bypassed a safety guard and placed her hand in a food cutter despite clear warning labels on the food cutter and instructions from a supervisor on the use of the machine); *In the Matter of Marva Nicholson* (MSB, decided May 23, 2000) (SLI benefits denied to employee who suffered injury to her eyes from mixing a cleaning agent with bleach where the employee admitted that she knew she should not have mixed the chemicals). Additionally, it is an appellant's burden of proof to provide evidence that his or her actions when the accident occurred did not subject him or her to a substantial risk of harm as the appellant was performing his or her job duties. If such a showing is made, SLI benefits cannot be denied based on gross negligence. See *In the Matter of Mary Montgomery* (MSB, decided May 9, 2000) (SLI granted to Trenton Psychiatric Hospital employee found not to be grossly negligent where employee accidentally dropped a cup containing chemicals, causing the chemicals to splash into the employee's eyes).

In the instant matter, the appointing authority denied the appellant further benefits claiming that the appellant was grossly negligent based on the fact that he was found guilty of the charge that he made a serious mistake due to carelessness which led to his injuries. The appellant contends that he did not violate any rules or procedures which led to his injury. However, the Commissioner of Personnel denied review of the appellant's appeal of his suspension and the suspension was upheld. Accordingly, since the appellant's actions in escorting an inmate without a second escort officer in violation of Departmental policy placed him at a substantial risk of harm, his actions constituted gross negligence, and he is not entitled to SLI benefits for the injuries received in the incident. See *In the Matter of G'Nell Turner* (MSB, decided January 30, 2001) (SLI denied to a Cottage Training Supervisor who had been trained in proper wheelchair handling but failed to follow proper procedure which led to her injuries). Thus, a thorough review of the record indicates that the denial of SLI benefits by the appointing authority was proper and

consistent with uniform SLI criteria and the appellant has failed to meet his burden of proof in this matter.

The Board notes for the record that the appellant received SLI benefits from May 3 through August 5, 2002. However, the Board will not rescind that award of SLI benefits. Should the appointing authority decide to recover the SLI benefits paid to the appellant, the appellant may petition the Board for a waiver of repayment of the salary overpayment pursuant to *N.J.A.C. 4A:3-4.21*.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.